

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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HYSITRON INCORPORATED,  
a Minnesota corporation,

Plaintiff,

v.

MTS SYSTEMS CORPORATION,  
a Minnesota corporation,

Defendant.

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Civil No. 07-cv-01533 (ADM/AJB)

**DECLARATION OF  
BRANDON ROCHELLE**

Brandon Rochelle states and declares as follows:

1. I am employed by New Century Group, Inc., which is located at 8351 East Walker Springs Lane, Suite 402, Knoxville, Tennessee 37923. New Century Group, Inc. provides brand and Internet consulting services to its clients. MTS-Nano is a client of New Century Group.
2. I have been working with the MTS-Nano account at New Century Group since approximately 2004. I have participated in and I am knowledgeable about MTS-Nano's Internet advertising activities.
3. Among other responsibilities, I provide an interface between MTS-Nano and Google regarding MTS-Nano's Internet advertising and marketing activities with Google. I have personal knowledge about MTS-Nano's marketing activities on Google and Google search engines.

4. On February 25, 2008, the word "hysitron" was removed as a keyword search term on the Google AdWords program. I personally removed the word "hysitron" as a keyword search term used in MTS's AdWords program on Google. I did this at the request of MTS-Nano.

5. I can confirm that after February 25, 2008 if one used Google to search the Internet and used "hysitron" as a keyword search term, this would not trigger a display of MTS' sponsored-link advertisement. Further, I have since modified the settings for MTS-Nano's ad campaign to prevent the word hysitron from invoking any other generic keywords which could otherwise cause MTS-Nano's sponsored-link advertisement to be displayed. In other words, if an Internet user conducts an Internet website search on Google using the keyword "hysitron," this search will not cause the MTS sponsored-link website to be displayed on the user's computer screen.

6. Google has an email service called Google Mail or "gmail." When one uses gmail, Google does a content search of the email. As a result, the recipient of an email sent through Google's gmail system may be presented with advertisements and website links which are relevant to or associated with the content of the recipient's email. For example, if one uses gmail to send an email containing the phrase "chocolate brownies," the gmail recipient's computer screen may display websites relating to chocolate brownies, such as the site for "Betty Crocker." This is done by Google's "AdSense", or content network programs, which makes an association between the content of the recipient's email and websites which Google deems to be potentially relevant.

7. Hysitron's website uses search terms containing various words and terms which describe Hysitron's business and products. Among these are "nanomechanical," "nanoindenter," and other similar terms which describe Hysitron's products or business. In addition, Hysitron's website has meta tags associated with it which contain the same keywords. MTS' website and keyword advertising contains the same or similar words which describe MTS' products and business.

8. Google's gmail content search process may associate Hysitron with those descriptive terms. It also may associate MTS with those terms. In testing I have found that if one uses gmail and types the term "hysitron" multiple times in the body of the email, Google's content network program associated the word "hysitron" with the general theme of MTS' content network advertising. The MTS website is presented to the recipient of an email which includes references to Hysitron because Google's content network algorithms may associate Hysitron with "nanomechanical" or other similar terms or words, and therefore presents the email recipient with content sites, such as the MTS website, which correspond with the content of the email. MTS has also purchased certain generic keywords, such as nanoindentation, which will trigger a link to MTS' website if used as a search term. This gmail content network ad is not occurring because MTS is purchasing "hysitron" as a search term.

9. Although MTS is not using "hysitron" as a keyword search term, there are other keywords which may invoke MTS' sponsored-link advertisement in the Google content network. In the case of email, Google Mail, Google's email system, looks at the content of the user's inbox to deliver ads to the email recipient based on content of the

user's various emails. Hysitron's own website contains the terms "nanoindenter" and "nanomechanical." MTS' website and keyword advertising contains similar terms. In addition, MTS has purchased "nanoindentation" as a keyword which will trigger a link to MTS' sponsored-link website. If one is using Google Mail as an email service, and if one receives an email or emails with references to "hysitron," then Google's content search may associate the term "hysitron" with nanoindenter, nanomechanical, or other similar words, and, in turn, associate these terms with MTS based upon the similarities of Hysitron's and MTS' products and services. Hysitron and MTS are, in a sense, linked through generic terms which describe the products or business of both companies.

I declare under penalty of perjury that the foregoing is based on my personal knowledge and belief and is true and correct. Executed on this 30<sup>th</sup> day of April, 2008 at Knoxville, Tennessee.

  
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Brandon Rochelle

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